

Message Text

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ACTION OES-04

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NASA HEADQUARTERS WASHDC

C O N F I D E N T I A L SECTION 1 OF 2 TANANARIVE 1793

E.O. 11652: GDS

TAGS: TSPA, NASA, MA, US

SUBJECT: NASA STATION NEGOTIATIONS

NASA FOR CODE I

REFS: A. TANANARIVE 1787

B. STATE 240470

C. TANANARIVE 1582

1. CHARGE, ACCOMPANIED BY NASA DEP STADIR AND EMBOFF, HELD TWO-HOUR SESSION WITH MALAGASY GOVT OFFICIALS NOV 15 TO NEGOTIATE CHANGES REQUIRED BY U.S. IN DRAFT NASA AGREEMENT. GOMR WAS REPRESENTED AT SESSION BY EDSON RAHALISON, SEC GEN OF MINTERRDEV, ELOI RAPIERA, DIRECTOR OF P&T, AND PAUL RAKOTONDRAMASY, DIRECTOR OF STUDIES IN MOFA. FOLLOWING ARE RESULTS OF NEGOTIATION SESSION, KEYED TO ARTICLES IN DRAFT NASA AGREEMENT WHICH WE WISH REVISED:

(A) ARTICLE 3: RETENTION OF PARA 3(C) ALLOWING FOR IMPORTATION OF REPLACEMENT OR SUPPLEMENTAL EQUIPMENT ACCEPTED WITHOUT CHANGE BY MALAGASY NEGOTIATORS.

(B) ARTICLE 5, FIRST SENTENCE: MALAGASY ACCEPT OUR
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REVISION OF FIRST SENTENCE IF ACCOMPANIED BY TWO

CLAUSES: "IN ALL CASES" TO FOLLOW IMMEDIATELY AFTER "WHO MUST" AND "AND WITH THE CONCURRENCE OF THE P&T" TO BE ADDED TO END OF SENTENCE. COMPLETE MODIFIED SENTENCE NOW READS AS FOLLOWS: "ANY NEW CONSTRUCTION AT THE STATION SITE SHALL BE PERFORMED BY NASA OR BY A UNITED STATES CONTRACTOR WHO MUST IN ALL CASES EMPLOY LOCAL SUBCONTRACTORS EXCEPT IN THOSE CASES WHERE THE REQUIRED SERVICES ARE NOT AVAILABLE LOCALLY AND WITH THE CONCURRENCE OF THE P&T."

(C) ARTICLE 5, SECOND AND THIRD SENTENCES AND SECOND PARAGRAPH: MALAGASY OBJECTED TO ADDITION OF WORD "CONSTRUCTION" TO MODIFY ALL DESCRIPTION OF MATERIALS, SERVICES AND SUPPLIES IN THIS ARTICLE. THEY MAINTAINED LANGUAGE USED IN THEIR VERSION OF DRAFT NASA AGREEMENT WAS TAKEN WITHOUT CHANGE FROM ORIGINAL AGREEMENT (IN CASE OF SECOND AND THIRD SENTENCES), AND THEY WOULD NOT WISH TO LIMIT THESE SENTENCES TO CONSTRUCTION MATERIALS ALONE. THEY EXPLAINED AT LENGTH THAT THEY WISH THIS ARTICLE TO APPLY TO OFFICE EQUIPMENT AND FURNITURE, FOR EXAMPLE, WHICH MIGHT BE PROCURED IN MADAGASCAR IN ADDITION TO CONSTRUCTION MATERIAL. MALAGASY ALSO SAID THEY "PREFERRED" TO RETAIN SENTENCE ON RE-EXPORTATION AS SUBMITTED IN THEIR TEXT OF DRAFT AGREEMENT, AND DID NOT ACCEPT ITS REMOVAL AS ALTERNATIVE TO LIMITING ARTICLE 5 TO CONSTRUCTION MATERIALS.

(D) ARTICLE 6: MALAGASY AGREED TO RE-INSERTION OF A SENTENCE ON TAX DUTIES AS NEW PARA 6(A), WITH FORMER PARAS 6(A) AND 6(B) BECOMING 6(B) AND 6(C) RESPECTIVELY. FOLLOWING IS SENTENCE ON TAX DUTIES AGREED TO BY MALAGASY, SLIGHTLY MODIFIED FROM LANGUAGE OF EARLIER AGREEMENT: "NO TAX, DUTY OR CHARGE OF A FISCAL CHARACTER SHALL BE LEVIED OR ASSESSED ON THE SAID SCIENTIFIC OR TECHNICAL MATERIEL, EQUIPMENT, AND SUPPLIES, BROUGHT INTO AND USED IN MADAGASCAR TEMPORARILY OR REMOVED FROM MADAGASCAR, THE LIST OF WHICH SHALL BE DRAWN UP BY COMMON AGREEMENT." DEPARTMENT/NASA WILL NOTE SUBSTITUTION OF "MATERIEL" FOR WORD "MATERIALS" IN ORIGINAL AGREEMENT AND ADDITION OF WORD "TEMPORARILY" TO ORIGINAL LANGUAGE. MALAGASY
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EXPLAINED THAT IN FRENCH "MATERIALS" USUALLY CONNOTES RAW MATERIALS, SUCH AS CEMENT OR BRICKS, FOR WHICH GOMR WOULD NOT BE PREPARED TO GRANT TAX EXEMPTIONS, WHEREAS "MATERIEL" CONNOTES FINISHED PRODUCTS OR MACHINERY, FOR WHICH THEY WOULD BE PREPARED TO GRANT EXEMPTIONS. SIMILARLY THEY EXPLAINED THEY UNDERSTOOD "SCIENTIFIC OR TECHNICAL MATERIEL, EQUIPMENT, AND SUPPLIES, BROUGHT INTO MADAGASCAR TEMPORARILY..." WOULD APPLY TO ALL MOVABLE

NASA SCIENTIFIC OR TECHNICAL EQUIPMENT REQUIRED TO RUN STATION, INCLUDING SUCH ITEMS AS PHOTOGRAPHIC FILM. WITHIN MEANING THIS CLAUSE, HOWEVER, TAX EXEMPTIONS WOULD NOT APPLY TO NON-SCIENTIFIC OR NON-TECHNICAL EQUIPMENT, SUCH AS OFFICE EQUIPMENT OR FURNITURE.

(E) ARTICLE 7, 7(A): MALAGASY AGREED TO DELETE PHRASE "UNDER CONDITIONS DETERMINED IN THE ENCLOSURE," AND PROPOSED FOLLOWING AS SUBSTITUTE: "UNDER CONDITIONS TO BE DEFINED IN AN AGREEMENT BETWEEN THE TWO PARTIES." THEY ALSO AGREED TO MODIFY SECOND SENTENCE TO READ: "THE DIRECTOR APPOINTED BY NASA SHALL REPRESENT THE NASA LOCALLY AND SUPERVISE PERFORMANCE OF TECHNICAL PROGRAMS. THE DIRECTOR OF POSTS AND TELECOMMUNICATIONS SHALL ASSUME THE ADMINISTRATION OF THE STATION." (HERE THE LANGUAGE PROPOSED BY NASA, NOTABLY "PROGRAM MANAGEMENT" DOES NOT TRANSLATE WELL INTO FRENCH. MALAGASY, HOWEVER, APPEARED TO UNDERSTAND AND AGREE WITH BASIC DISTINCTION BETWEEN FUNCTIONS OF THE TWO DIRECTORS THAT WE WISH.) MALAGASY ALSO AGREED TO ADDITION OF THIRD SENTENCE TO READ: "THE DETAILS OF OPERATIONAL PROCEDURES, AND THE SPECIFIC ROLES AND RESPONSIBILITIES OF THE DIRECTORS SHALL BE DEFINED IN SUPPLEMENTAL ARRANGEMENTS AS PROVIDED FOR IN ARTICLE 9(A)."

(F) ARTICLE 7, 7(B): MALAGASY AGREED TO REINSTATE FOLLOWING AS SECOND SENTENCE OF ARTICLE 7(B): "AT SUCH TIME AS NASA AND THE P&T JOINTLY DETERMINE THERE ARE SUFFICIENT NUMBERS OF QUALIFIED MALAGASY TECHNICAL PERSONNEL TRAINED TO MEET NASA REQUIREMENTS, NASA SHALL DELEGATE BY CONTRACT TO THE P&T THE RESPONSIBILITY FOR THE STATION OPERATION AND MAINTENANCE FOR THE PROGRAMS COVERED BY THE PRESENT AGREEMENT."
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(G) ARTICLE 8(A): MALAGASY WERE HIGHLY RELUCTANT TO STRIKE ALL REFERENCE TO REQUIREMENT OF 30 DAYS' PRIOR NOTIFICATION OF ARRIVAL OF PERSONNEL. AS ALTERNATIVE, THEY DID AGREE TO ADDITION OF FOLLOWING ESCAPE CLAUSE AT END OF FIRST SENTENCE, ARTICLE 8(A): "EXCEPT IN CASE OF URGENCY AS DETERMINED BY THE DIRECTOR OF THE STATION."

(H) ARTICLE 9(A): MALAGASY AGREED TO DELETE SECOND SENTENCE IN ITS ENTIRETY.

(I) ARTICLE 10: MALAGASY WERE NOT RPT NOT PREPARED TO ACCEPT CLAUSE DEALING WITH APPROPRIATED FUNDS LIMITATION AS SEPARATE ARTICLE OR PARAGRAPH OF AGREEMENT. THEY MAINTAINED THAT CONTINGENCY OF FUNDS NON-AVAILABILITY IS

FULLY ENCOMPASSED WITHIN ARTICLE 10(B) OF DRAFT AGREEMENT.
MALAGASY AGREED, HOWEVER, TO ADD CLAUSE SPECIFICALLY
REFERRING TO APPROPRIATED FUNDS LIMITATION TO ARTICLE 10(B)
OF AGREEMENT, WHICH WOULD NOW READ AS FOLLOWS: "SHOULD
CHANGED CONDITIONS, SUCH AS THE NON-AVAILABILITY OF FUNDS
APPROPRIATED BY THE CONGRESS OF THE UNITED STATES, ALTER
THE REQUIREMENTS ..."

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FM AMEMBASSY TANANARIVE

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C O N F I D E N T I A L SECTION 2 OF 2 TANANARIVE 1793

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2. EMBASSY COMMENT: GIVEN US-GOMR ATMOSPHERICS OF PAST
FEW DAYS, EMBASSY WAS PLEASED TO FIND NEGOTIATING SESSION
BUSINESSLIKE AND REASONABLE IN TONE. AT OUTSET, GOMR SIDE
NOTED THAT BASIC POINTS OF AGREEMENT ALREADY REACHED BY
AMBASSADOR MENDENHALL AND GENERAL ANDRIAMAHAZO. WHILE GOMR
SIDE DID NOT ACCEPT ALL U.S. POINTS, INDICATIONS WERE
THAT -- FOR GOMR NEGOTIATING TEAM AT LEAST -- INTENTION OF
GOMR RESTRICTIVE LANGUAGE ON IMPORT AND EXPORT WAS TO

MAXIMIZE USE OF LOCALLY PROCURED MATERIAL RATHER THAN TO
BLEED NASA WITH NEW DUTIES AND TAXES.

3. EMBASSY BELIEVES THAT ATTEMPT SHOULD BE MADE TO GO AS
FAR AS POSSIBLE IN ACCEPTING WHAT WE NOW HAVE IN ORDER TO
MOVE TOWARDS SIGNATURE. POSSIBLY THIS COULD BE EFFECTED
BY ONE MORE NEGOTIATING SESSION WITH DEPARTMENT INSTRUCTIONS
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THAT SET PARAMETERS OF ACCEPTABILITY COUPLED WITH PERMISSION
TO SET DATE FOR SIGNATURE IF BASIC U.S. REQUIREMENTS ARE
MET. EMBASSY BELIEVES GOMR WILLINGNESS TO MOVE AHEAD
DEMONSTRATED BY THEIR PREPARATION OF DRAFT P&T-NASA
AGREEMENT, VISIT TO STATION, AND GOADING OF U.S. SIDE ON
SLOWNESS OF RESPONSE TO THEIR DRAFT. SHOULD THIS SPIRIT
OF COOPERATION CHANGE, EVEN ELABORATELY DEFINED AGREEMENT
WILL DO US LITTLE GOOD. (END COMMENT)
ELFERS

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